

and intelligent, are gone into at length, and deemed sufficient grounds for the final decision to send the prisoners into one of the rural districts.

The selection of a particular one and the formal order embodying the decision of the Court, are to be settled by the respective counsel among themselves, unless the defendants' counsel shall think it competent and advisable for them to appeal.

S. B. STRONG, J.—The defendants stand indicted for the alleged murder of William Poole in the City and County of New York. The indictment contains as many counts as

The first count charges the defendant Baker as the most prominent actor and the others as being present at the scene of the murder and aiding and abetting him. He elected to be tried separately. He was first tried at a Court of Oyer and Terminer held before Judge Roosevelt in the County of New York where the venue is laid and the indictment was found, in December last. The trial lasted nearly a fortnight, and resulted in

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been joined upon any issue shall only be tried by a jury in the country where such issue is raised. The court shall order an arrest and removal of the accused to the place where the trial is to be held, and shall order that Counsel be tried in some other manner. The court shall also order the accused to be removed to the place where the trial is to be held, and shall order that Counsel be tried in some other manner. The court shall also order the accused to be removed to the place where the trial is to be held, and shall order that Counsel be tried in some other manner.

The counsel for the defendants contended that if the right to be present at a trial is a constitutional right, the District Attorney should be required to call the witnesses in the case. The court stated and ruled as common law, it would have been shown by the evidence and the authorities that the right to be present at a trial is not a constitutional right. The act of 1867, The act of 1829 provides (1) that to continue to remove into the Supreme Court a case removed from the District Court, the party removing must first obtain the leave of the District Court thereon, and be heard unless allowed by a Justice of the Supreme Court, or their Circuit Judge; (2) when application for removal is made, the District Court may order the removal to be made should take from the defendant a recognizance to appear at the trial of the case in the District Court, and the parties may be heard on the removal day thereof in the Supreme Court; and while the order and rule of each Court; and the order and rule of the Supreme Court shall prevail. It is to be noted that no case may be removed for treason, murder or arson in the first degree, and as was may be clearly from the language of the act, that the removal is to be made in the Supreme Court. If the last section of the act of 1829 had stated that the removal of a case might have been continued to im-

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of the defendant, so that requiring the complainant where the defendant is a corporation to be responsible for the good behavior of its agent? But the prohibitory act furnishes no very reliable basis for the construction of other statutes. In reference to the act of 1829, it may raise a slight inference that the Legislature by which it was passed supposed that the corporation could be sued only at the instance of the defendant, and that could not have the effect to abrogate a pre-

viating rights of the people, and one, too, which might be very essential to the due administration of justice under circumstances of frequent recurrence. In England it has been generally held that the rights of the Crown are not taken away by any general statutory provision, unless the intention to do so clearly and directly manifested. Thus, in the case of the King v. Innes (25 Term, R. 636), Judge Buller remarked that "the general rule is, that when the certiorari [in criminal cases] is

away by act of Parliament, the Crown is not included in the restriction, unless there be some words in the act to show that the Legislature intended it"; and Judge Goss said: "We cannot break in upon the general rule which has been so long established, that the Crown is not bound by the several acts of a statute taking away the certiorari, unless it appear upon the face of the act of Parliament, that the Legislature intended that the Crown should be bound." The same rule is

decisions were accepted and applied by the Crown officers in criminal cases obtained by the inhabitants of the County in the case of the King at The King's Bench, 4th Term (underlined by the Court of Lords) (41 Bonaparte & 194) and by the House of Lords (41 Bonaparte & 194). There are many other cases in the English law to the same effect and the rule is well settled in this country from which we infer the common law. In this State, the rule is well settled in the criminal law.

to the people the acquire the right to the Crown of England in criminal cases, except where they are inconsistent with our form of Government or have been expressly abrogated (and neither the case here.) It is safe to include that the well settled rights of the public have not been taken away by a remote inference. The continuance of the right was recognized by the Supreme Court in the 18th question was recognized by the Supreme Court in the case of the People vs. Webb (which I have before cited), long before the case of the People vs. Webb. I am, therefore, still

The most material, and by far the most difficult question presented for my consideration is, whether the place of trial should be determined by the defendant or by the Government. Trial cannot

located in the City and County of New York. There are many possible reasons why trials in criminal cases should ordinarily be held in the counties where the transactions which gave rise to them occurred, and a change should be made except for forcible and clearly established ones. Our statutes require that issues of fact joined upon indictment shall be tried by a jury in the county where the offense was committed, but for special cases, the dis-

the Court shall order such defendant removed into that Court, be tried in some other county (44 R.S. 753 § 1). Mr. Chitty says (at p. 496), that "Not very strong evidence of partiality will be required in order to induce the Court to listen to the application for the removal" (to another place of trial). To that I cannot assent, nor is the position supported by the authorities to which he has turned author refers. In one of the cases cited he says (see *Horne v. Horne*, 8 Burr. 61, 1353), Lord Mans-

aid said: "There must be a clear and solid foundation for the seventh" (of particular). The question as to the enforceability of a law, Juror does not refer exclusively to his beliefs, but extends to any opinion which he may have formed and expressed in reference to any material question involved in the controversy, and which may at all influence his decision. Thus, one who serves as a Grand Juror when the indictment is returned, is not to be considered as having rendered the life of the accused.

...to the punishment of death, is disqualified, although he has no hostile or favorable feeling toward the defendant. Some of the English authorities even go so far as to state that some feeling of the